

**A. G. Electric & Guajardo Construction Co., Inc.
and International Brotherhood of Electrical
Workers, Local Union #295, AFL-CIO. Case
26-CA-14040**

April 28, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed by the Union on August 31, 1990, and an amended charge filed on September 28, 1990, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on October 2, 1990, against A. G. Electric & Guajardo Construction Co., Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On October 31, 1990, the Respondent filed an answer admitting in part and denying in part the allegations of the complaint. On March 29, 1991, the Regional Director approved a settlement agreement entered into by the Respondent and the Union. Thereafter, the Respondent failed to comply with the settlement agreement by refusing to make required contributions to the contractually mandated fringe benefit funds and by failing to post the agreed on "Notice to Employees." The Regional Director issued an amended complaint, compliance specification and notice of hearing on September 12, 1991, in which the settlement agreement was set aside for noncompliance. On October 10, 1991, the Respondent filed an answer to the amended complaint denying the allegations of the amended complaint. The Respondent filed an amended answer to the amended complaint dated January 9, 1992, admitting all allegations of the amended complaint, compliance specification, and notice of hearing.

On January 27, 1992, counsel for the General Counsel filed a Motion to Transfer Case to Board and for Summary Judgment. On February 3, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Motion for Summary Judgment should not be granted.

On February 18, 1992, the Respondent filed a Response to Motion to Transfer Case to Board and for Summary Judgment.

On March 2, 1992, counsel for the General Counsel filed a reply to Respondent's response for General Counsel's Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its amended answer to the amended complaint, compliance specification, and notice of hearing dated January 9, 1992, the Respondent admits each and every allegation of the amended complaint and compliance specification.

In its response to the Motion for Summary Judgment the Respondent, in effect, concedes admitting all the allegations set forth in the amended complaint. The Respondent joins in "allowing this matter to be submitted to the Board for summary judgment" but denies the Motion for Summary Judgment's assertions that: (1) there are no issues requiring a hearing; (2) summary judgment should be granted; and (3) the Board should find that the Respondent failed and refused to make contractually required contributions to the fringe benefit funds in violation of Section 8(a)(5) and (1). In this regard, the response asserts that accompanying exhibits demonstrate that the Respondent's resignation from the retirement plan was approved "by the regional director of the International Brotherhood of Electrical Workers on or about January 17, 1989."

The Response to Motion to Transfer Case to Board and for Summary Judgment is not supported by exhibits accompanying the response, and, in any event, is inadequate in light of the Respondent's previous admissions.

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material the Respondent, a corporation with an office and place of business in North Little Rock, Arkansas, has been engaged in the construction industry as an electrical contractor. During the past 12 months preceding issuance of the amended complaint the Respondent, in the course and conduct of its business operations described above, performed services valued in excess of \$50,000 in states other than the State of Arkansas and derived gross revenues in excess of \$250,000. We find that the Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All general foremen, journeymen, and apprentice wiremen employed by Respondent, excluding all guards and supervisors as defined by the Act, within the following counties in Arkansas: Fulton, Izard, Stone, Van Buren, Cleburne, Conway, Faulkner, Saline, Arkansas, White, Woodruff, Lonoke, Prairie, Perry, Pulaski, Monroe, Jefferson, and Lincoln.

About December 13, 1982, the Union was recognized as the exclusive collective-bargaining representative of the unit. At all times since on or about December 13, 1982, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit for the purpose of collective bargaining with respect to the rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about June 11, 1990, the Union, by verbal and written request, has asked the Respondent to furnish the Union payroll and other employee records necessary to audit the Respondent's contributions to the Union's Employee Benefit Trust Funds. This information is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit. From about July 12, 1990, until May 16, 1991, the Respondent failed and refused to furnish to the Union the information requested by the Union as described above.¹

The Union and the Respondent, through a "Letter of Assent" executed on December 13, 1982, are parties to a collective-bargaining agreement which requires the Respondent to make contributions to a retirement plan and health and benefit fund on behalf of its employees. Since on or about March 28, 1990, and continuing to date, the Respondent has failed and refused to pay retirement plan and health and benefit fund contributions on behalf of its employees. The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the acts and conduct described above without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employ-

ees with respect to the acts and conduct and the effects of the acts and conduct.

We find that by the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the Union, and thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

By refusing, from on or about July 12, 1990, to May 16, 1991, to furnish the Union with information necessary for and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees, and by failing and refusing to make contractually required contributions to the retirement plan and health and benefit fund without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive collective-bargaining representative of the unit employees, the Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that the Respondent violated Section 8(a)(5) of the Act by failing to make payments to the retirement plan and health and benefit fund. We shall order that the Respondent make the payments to the retirement plan and health and benefit fund as required by the collective-bargaining agreement with any additional amounts computed as provided in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). The Respondent shall also reimburse its employees for any expenses ensuing from its unlawful failure to pay those amounts, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).²

¹ The amounts owed by the Respondent to the Union's Employee Benefit Trust Funds for the period of March 1990 through April 1991 are as follows:

IBEW-NECA Southwestern Health and Benefit Fund, \$9,306.80; National Electrical Benefit Fund, \$1,586.82; NECA-IBEW Retirement Plan, \$9,638.25. Amounts owed to the funds since May 1, 1991, shall be determined at the compliance stage of these proceedings. Any additional amounts due are to be computed as set forth above.

² The amended complaint states that the requested information was furnished to the Union on May 16, 1991.

ORDER

The National Labor Relations Board orders that the Respondent, A. G. Electric & Guajardo Construction Co., Inc., North Little Rock, Arkansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to make contractually required payments to the retirement plan and health and benefit fund as required by the collective-bargaining agreement.

(b) Failing and refusing, on request, to furnish the Union with payroll and other employee records necessary to audit the Respondent's contributions to the Union's Employee Benefit Trust Funds, when this information is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the retirement plan and health and benefit fund whole as set forth in the remedy section of this decision.

(b) Make whole the unit employees for any loss of benefits they may have suffered from the Respondent's failure to make fringe benefit fund contributions in the manner set forth in the remedy section of this decision. The appropriate unit is:

All general foremen, journeymen, and apprentice wiremen employed by Respondent, excluding all guards and supervisors as defined by the Act, within the following counties in Arkansas: Fulton, Izard, Stone, Van Buren, Cleburne, Conway, Faulkner, Saline, Arkansas, White, Woodruff, Lonoke, Prairie, Perry, Pulaski, Monroe, Jefferson, and Lincoln.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in North Little Rock, Arkansas, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided

by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to make contractually required payments to the retirement plan and health and benefit fund as required by the collective-bargaining agreement.

WE WILL NOT fail and refuse, on request, to furnish the Union with payroll and other employee records necessary to audit our contributions to the Union's Employee Benefit Trust Funds, when this information is necessary for, and relevant to, the Union's performance of its function as the collective-bargaining representative of the appropriate unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our employees in the unit by making all the contractually required payments to the retirement plan and health and benefit fund as required by the collective-bargaining agreement that have not been paid, and by reimbursing our employees in the appropriate unit for any expenses, plus interest, ensuing from our failure to make the contractually required payments. The appropriate unit is:

All general foremen, journeymen, and apprentice wiremen employed by us, excluding all guards and supervisors as defined by the Act, within the following counties in Arkansas: Fulton, Izard, Stone, Van Buren, Cleburne, Conway, Faulkner, Saline, Arkansas, White,

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Woodruff, Lonoke, Prairie, Perry, Pulaski,
Monroe, Jefferson, and Lincoln.

A. G. ELECTRIC & GUAJARDO CON-
STRUCTION CO., INC.